IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.M.No.7937-C of 2006 &
R.S.A.No.3254 of 2006

Date of Decision : December 19, 2006.

Union of India and others ..... Appellants

Vs.

No.10466530 Ex.Sep. Ramesh Kumar ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

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Present : Ms.Daya Chaudhary, Asstt.Solicitor General of India
for the appellants.

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P.S.Patwalia, J. (Oral) :

The present Regular Second Appeal has been filed against concurrent findings recorded by the courts below holding the plaintiff entitled for the grant of disability pension. The appeal suffers from a delay of 100 days. A separate application has been filed seeking condonation of the same.

A reading of the judgments of the courts below would show that the Medical Board has certified that the plaintiff was in a fit state of health and did not possess any defect or disease when he was enrolled in the Indian Army on 1.5.1991. While in service he developed illness and reported sick in the unit MI room where he was kept under treatment but the problems kept on recurring for which he had to be admitted in the Military Hospital. After a prolonged illness the plaintiff was assessed as invalid and was discharged from service on 25.11.1998. His disability was assessed at 30% by the Medical Board. However disability pension was

declined on the ground that the disease from which he was suffering being CNS (INV) SEIZURE was stated to be a constitutional disease. The plaintiff filed a representation claiming family pension. No action was taken on that too. He thereafter served a legal notice upon the defendants. Even that was not replied to. Ultimately he was having no option but to file the civil suit.

Both the courts below relying upon Rule 7(b) of the Appendix II (Entitlement Rules) have held that a disease which had led to an individual discharge from Army, would be deemed to have arisen during the course of service if no note of the same was made at the time of individual's acceptance for the military service. However if the medical opinion, for the reasons to be stated, holds that the disease has not arisen on account of military service, disability pension can be denied. Pension Regulation 173 and Rule 7(b) which are extracted in the judgments of the courts below read as hereunder :-

Pension Regulation 173 :

> *"Unless otherwise specifically provided a disability pension may be granted to an individual who is invalidated from service on account of a disability, which is attributable or aggravated by Military Service and is assessed at 20 per cent or over."*

Rule 7(b) of Appendix II (Entitlement Rules) :

> *"(a) In respect of disease, the following rules shall be observed.*
>
> *(b) A disease which has led to an individual discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military*

service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service."

The respondents have not produced before the courts any reasons given by the Medical Board to hold that the disease could not have arisen during the course of service except to state that it was a constitutional disorder. This contention has been rejected by the lower appellate court as hereunder :-

"It is further proved on the record that when the plaintiff joined the Army, he was subjected to medical examination in which he was declared to be `fit' by the Medical Authorities and that is why he was allowed to undertake his duty. We all know that after joining the Army, a soldier undertakes a very hard training and he undergoes lot of stress and strain. A training in the practical use of arm and ammunition is given to a soldier so that he may be able to fight the enemy in case of need. When the initial condition of a soldier is okay and he is placed in category `A', then there is no difficulty in holding on the part of this Court that the petitioner suffered the disease when he was in the service and in these circumstances, it has to be held that the disease suffered by him is attributable to the Army Service. Division Bench of Hon'ble Punjab & Haryana High Court in a case Union of India and others Versus Shyam Lal

Malhotra, 1995 (2) R.S.J. 493 was pleased to hold that if a soldier is found fit at the time of recruitment and there is no proof that the disease is un-related to the service of the soldier, in such a situation, he will be entitled to the benefit of disability pension. In a case 14576923 `X' Ex-CFN Jai Vir Singh Versus Union of India and others 2001 (1) RSJ, 272 wherein it has been held that disability pension disallowed on the ground that the disability `CZS Seizure' is not attributable to Military Service – Contention that the invalidating disease was inherent in the body of the petitioner prior to his enrollment which was only manifested during service repelled – Held that petitioner is entitled to get disability pension in accordance with the rules. In Kanta Devi Vs. Union of India and others, 1999 (1) S.L.R. 668 it was held that this was also a case of "Non-Organic Psychosis". Since there was no history sheet to prove by the respondent-authorities that the petitioner was suffering from any mental illness earlier, so it could not be said that he was suffering from the disease either at the time of joining the service."

I find no error in the view taken by the courts below. The plaintiff was fit when he joined the Army. He has developed this disease due to arduous nature of duties in the Army and on account of the fact that a soldier has to take a hard training and to undergo stress and strain. I find no substantial question of law arising for determination in this Regular Second

Appeal.

The Regular Second Appeal as also the application for condonation of 100 days of delay are consequently dismissed.

December 19, 2006 (P.S.Patwalia)
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